

UNITED STATES DISTRICT COURT

for the

DISTRICT OF UTAH

Northern Division

FILED
U.S. DISTRICT COURT
2011 JUL -1 P 12:20
DISTRICT OF UTAH
BY: _____
DEPUTY CLERK

BRADY EAMES
478 E. 700 N.; Apt. #2
Logan UT 84321,

Plaintiff

v.

WILMA B. LIEBMAN
in her official capacity as the Head of
the National Labor Relations Board
1099 14th Street NW, Suite 11600
Washington, D.C. 20570

Defendant

Civil Action No.

Case: 1:11cv00113
Assigned To : Waddoups, Clark
Assign. Date : 7/1/2011
Description: Eames v. Liebman

JURISDICTION

1. This action arises under the Freedom of Information Act ("FOIA"), 5 U.S.C. § 552(a)(4)(B). Jurisdiction is proper in the U.S. District Court for the District of Utah Northern Division

PARTIES

2. The Defendant Wilma B. Liebman ("Liebman") is the current *Head* of the Federal

Agency known as the National Labor Relations Board ("Agency"). She was appointed by the President to be the Chairman of the Agency's Board on January 20, 2009 and was appointed by the President to be a Member of such Board on November 14, 1997 by and with the advise and consent of the U.S. Senate.

3. The plaintiff Brady Eames ("Brady") is a member of the public who is vitally interested in the final opinions and orders made in the adjudications of unfair labor practice cases and of voluntary recognition cases by the Regional Directors of the Agency.

NATURE OF THE CASE

4. Pursuant to the FOIA (a)(6)(A)(i), is it the responsibility of officers and employees of a Federal agency to notify the public in their adverse determinations made in FOIA cases that such public have the right to appeal such adverse determinations to the *head* of such agency?

5. Pursuant to the FOIA (a)(6)(A)(ii), is it the duty and authority of the *head* of a Federal agency to make determinations with respect to the appeals of adverse determinations made in FOIA cases by such agency's officers and employees?

6. In the absence of a statutory delegation by the U.S. Congress through the FOIA, or of a delegation by the *head* of a Federal agency through publicized regulation, is it legal when the General Counsel or Solicitor of such agency make adverse determinations with respect to the public's appeals of adverse determinations made by the officers or employees of such agency?

CAUSES OF ACTION

7. The Agency's publications titled Organization and Functions ("O & F"), Rules and Regulations ("R & R"), FOIA Manual ("FM") and FOIA Reference Guide ("FRG") are all

currently made available on the Agency's worldwide website.

8. The O & F notifies the public that the Agency's Regional Directors ("Directors") make initial FOIA determinations but is completely silent with respect to initial FOIA determinations made by any other officers or employees of the Agency or to determinations made by the Agency's *Head* upon the public's appeals of adverse initial determinations made by the Directors.

9. The FRG notifies the public that an attorney in the Agency's Headquarters Office makes FOIA determinations upon the public's appeals of initial adverse determinations made by the Directors or by other officers and employees of the Agency but is completely silent with respect to determinations made by the Agency's *Head* upon the public's appeals of such adverse initial determinations.

10. The O & F, R & R, FM and FRG do *not*:

- A. refer to the *Head* of the Agency.
- B. notify the public of any Congressionally authorized Agency bifurcation of the FOIA appeals process set forth in the FOIA (a)(6)(A)(i)(ii).
- C. notify the public that the U.S. Congress through the FOIA, or the Agency's *Head* by regulation, has delegated to the Agency's General Counsel ("Counsel") or to the Agency's Solicitor ("Solicitor") the making of determinations with respect to the public's appeals of adverse determinations made in FOIA cases by the Agency's officers or employees.
- D. notify the public that the Directors have delegated the making of initial FOIA determinations to the Counsel's FOIA Officer.

11. On January 18, 2011, the Counsel's FOIA Officer Jacqueline A. Young ("Young")

made adverse initial determinations under FOIA Cases LR-2011-0202, -0203, -0237, -0240, -0272 and -0273 but did *not* notify Brady of any delegation to do so by the Directors or of his right to appeal such determinations to Liebman or that the U.S. Congress through the FOIA, or Liebman by regulation, had delegated to Counsel Lafe A. Solomon ("Solomon") the making of determinations with respect to Brady's appeals of such adverse determination.

12. On January 28, 2011, Brady appealed to Liebman to make determinations with respect to Young's adverse determinations made under FOIA Cases LR-2011-0202 and -0203.

13. On January 21, 2011, Young made an adverse determination under FOIA Case LR-2011-0289 but did *not* notify Brady of any delegation to do so by the Directors or of his right to appeal such determination to Liebman or that the U.S. Congress through the FOIA, or Liebman by regulation, had delegated to Solomon the making of a determination with respect to Brady's appeal of such adverse determination.

14. On January 31, 2011, Young made an adverse determination under FOIA Case LR-2011-0327 but did *not* notify Brady of his right to appeal such determination to Liebman or that the U.S. Congress through the FOIA, or Liebman by regulation, had delegated to Solomon the making of a determination with respect to Brady's appeal of such adverse determination.

15. On February 3, 2011, Young made an adverse determination under FOIA Case LR-2011-0345 but did *not* notify Brady of any delegation to do so by the Directors or of his right to appeal such determinations to Liebman or that the U.S. Congress through the FOIA, or Liebman by regulation, had delegated to Solomon the making of determinations with respect to Brady's appeals of such adverse determination.

16. On February 24, 2011, Brady appealed to Liebman to make determinations with respect to Young's adverse determinations made under FOIA Cases LR-2011-0237, -0240,

-0272, -0273, -0289, -0327 and -0345.

17. On March 16, 2011, Solomon, by the Director of his Office of Appeals, Yvonne T. Dixon ("Dixon"), made adverse determinations with respect to Brady's appeals of Young's adverse determinations made under FOIA Cases LR-2011-0202, -0203, -0237, -0240, -0272, -0273, -0289, -0327 and -0345 but did not notify Brady of *any* delegation to do so by the U.S. Congress through the FOIA or by Liebman through regulation.

18. To date, Liebman has *not* made determinations with respect to Brady's appeals of Young's adverse determinations made under FOIA Cases LR-2011-0202, -0203, -0237, -0240, -0272, -0273, -0289, -0327 and -0345.

19. On March 23, 2011, Young made an adverse determination under the FOIA Case LR-2011-0453 but did *not* notify Brady of his right to appeal such determination to Liebman or that the U.S. Congress through the FOIA, or Liebman by regulation, had delegated to Solomon the making of a determination with respect to Brady's appeal of such adverse determination.

20. On April 4, 2011, Brady appealed to Liebman to make a determination with respect to Young's adverse determination made under FOIA Case LR-2011-0453.

21. On April 7, 2011, Solomon, by Dixon, made an adverse determination with respect to Brady's appeal of Young's adverse determination made under FOIA Case LR-2011-0453 but did *not* notify Brady of *any* delegation to do so by the U.S. Congress through the FOIA or by Liebman through regulation.

22. To date, Liebman has *not* made a determination with respect to Brady's appeal of Young's adverse determination made under FOIA Case LR-2011-0453.

23. On March 29, 2011, Young made an adverse determination under the FOIA Case LR-2011-0468 but did *not* notify Brady of his right to appeal such determination to Liebman or

that the U.S. Congress through the FOIA, or Liebman by regulation, has delegated to Solomon the making of a determination with respect to Brady's appeal of such adverse determination.

24. On April 26, 2011, Brady appealed to Liebman to make a determination with respect to Young's adverse determination made under FOIA Case LR-2011-0468.

25. On May 3, 2011, Solomon, by Dixon, made an adverse determination with respect to Brady's appeal of Young's adverse determination made under FOIA Case LR-2011-0468 but did not notify Brady of *any* delegation to do so by the U.S. Congress through the FOIA or by Liebman through regulation.

26. To date, Liebman has *not* made a determination with respect to BRADY's appeal of Young's adverse determination made under FOIA Case LR-2011-0468.

27. On April 5, 2011, Young made an adverse determination under the FOIA Case LR-2011-0485 but did *not* notify Brady of his right to appeal such determination to Liebman or that the U.S. Congress through the FOIA, or Liebman by regulation, has delegated to Solomon the making of a determination with respect to Brady's appeal of such adverse determination.

28. On May 3, 2011, Brady appealed to Liemban to make a determination with respect to Young's adverse determination made under FOIA Cases LR-2011-0485.

29. On May 18, 2011, Liebman, by Cowen, made an adverse determination with respect to Brady's appeal of Young's adverse determination made under the FOIA Case LR-2011-0485 and warned Brady that, to the extent he contemplated Liebman would review and act on his Appeals, such Appeals were "misdirected".

30. On May 26, 2011, Solomon, by Dixon, made an adverse determination with respect to Brady's appeal of Young's adverse determination made under FOIA Case LR-2011-0485 but did not notify Brady of *any* delegation to do so by the U.S. Congress through the FOIA or by

Liebman through regulation.

31. To date, Liebman has *not* made a determination with respect to Brady's appeal of Young's adverse determination made under FOIA Cases LR-2011-0485.

32. To date, there has been *no* delegation by the U.S. Congress through the FOIA, or by Liebman through regulation, to Solomon of the making of determinations with respect to Brady's appeals of Young's adverse determinations made under the above cited FOIA Cases.

33. On April 11, 2011, the Agency's Executive Secretary Lester A. Heltzer ("Heltzer") made an adverse determination under the FOIA Case ES-2011-0048 which notified Brady of his right to appeal such determination to Liebman.

34. On May 9, 2011, Brady appealed to Liebman to make a determination with respect to Heltzer's adverse determination made under FOIA Cases ES-2011-0048.

35. On May 18, 2011, Liebman, by Cowen, made an adverse determination with respect to Brady's appeal of Heltzer's adverse determination made under FOIA Case ES-2011-0048 but did *not* notify Brady of *any* delegation to do so by the U.S. Congress through the FOIA or by Liebman through regulation.

36. On April 11, 2011, Heltzer made an adverse determination under the FOIA Case ES-2011-0051 and -0052 which notified Brady of his right to appeal such determination to Liebman.

37. On May 9, 2011, Brady appealed to Liebman to make a determination with respect to Heltzer's adverse determination made under FOIA Cases ES-2011-0051 and -0052.

38. On May 18, 2011, Liebman, by Cowen, made an adverse determination with respect to Brady's appeals of Heltzer's adverse determinations made under FOIA Cases ES-2011-0051 and -0052 but did *not* notify Brady of *any* delegation to do so by the U.S. Congress through the

FOIA or by Liebman through regulation.

39. On April 11, 2011, Heltzer made an adverse determination under the FOIA Case ES-2011-0053 which notified Brady of his right to appeal such determination to Liebman.

40. On May 9, 2011, Brady appealed to Liebman to make a determination with respect to Heltzer's adverse determination made under FOIA Cases ES-2011-0053.

41. To date, Liebman has *not* made a determination with respect to Brady's appeal of Heltzer's adverse determination made under FOIA Cases ES-2011-0053.

42. To date, there has been *no* delegation by the U.S. Congress through the FOIA, or by Liebman through regulation, to Cowen of the making of determinations with respect to Brady's appeals of Heltzer's adverse determinations made under the above cited FOIA Cases.

INJURY

43. In the FOIA Cases LR-2011-0202, -0203, -0237, -0240, -0272, -0273, -0289, -0327, -0345, -0453, -0468 and -0485, Liebman has violated Brady's rights under the FOIA (a)(6)(A)(i) by neglecting to notify Brady in Young's adverse determinations made under such FOIA Cases of his right to appeal to Liebman to make determinations with respect to Brady's Appeals of such adverse determinations.

44. In the FOIA Cases LR-2011-0202, -0203, -0237, -0240, -0272, -0273, -0289, -0327, -0345, -0453, -0468 and -0485, Liebman has violated Brady's rights under the FOIA (a)(6)(A)(ii) by neglecting to make determinations with respect to Brady's Appeals of Young's adverse determinations made under such FOIA Cases.

45. In the FOIA Cases LR-2011-0202, -0203, -0237, -0240, -0272, -0273, -0289, -0327, -0345, -0453, -0468 and -0485, Dixon has violated the FOIA (a)(6)(A)(ii) by making adverse

7 determinations with respect to Brady's appeals of Young's adverse determinations made under such FOIA Cases unsupported by *any* delegation to do so by the U.S. Congress through the FOIA or by Liebman through regulation.

46. In the FOIA Cases LR-2011-0202, -0203, -0237, -0240, -0272, -0273, -0289, -0327, -0345, -0453, -0468 and -0485, Liebman has violated the FOIA (a)(6)(A)(ii) by permitting Dixon to make adverse determinations with respect to Brady's appeals of Young's adverse determinations made under such FOIA Cases unsupported by *any* delegation to do so by the U.S. Congress through the FOIA or by Liebman through regulation.

47. In the FOIA Cases ES-2011-0048, 0051, -0052, Liebman has violated the FOIA (a)(6)(A)(ii) by neglecting to make determinations with respect to Brady's Appeals of Heltzer's adverse determination made under such FOIA Cases.

7 48. In the FOIA Cases ES-2011-0048, 0051, -0052, Cowen has violated the FOIA (a)(6)(A)(ii) making determinations with respect to Brady's Appeals of Heltzer's adverse determination made under such FOIA Cases unsupported by *any* delegation to do so by the U.S. Congress through the FOIA or by Liebman through regulation.

49. In the FOIA Cases ES-2011-0048, 0051, -0052, Liebman has violated the FOIA (a)(6)(A)(ii) by permitting Cowen to make determinations with respect to Brady's Appeals of Heltzer's adverse determinations made under such FOIA Cases unsupported by *any* delegation to do so by the U.S. Congress through the FOIA or by Liebman through regulation.

7 50. In the FOIA Case ES-2011-0053, Liebman has violated Brady's rights under the FOIA (a)(6)(A)(ii) by neglecting to make a determination with respect to Brady's Appeal of Heltzer's adverse determination made under such FOIA Case.

REQUESTS FOR RELIEF

51. Pursuant to the FOIA (a)(6)(A)(i), order Liebman to notify Brady in the adverse determinations made by Young under FOIA Cases LR-2011-0202, -0203, -0237, -0240, -0272, -0273, -0289, -0327, -0345, -0453, -0468 and -0485 of Brady's right to appeal to Liebman to make determinations with respect to such FOIA cases.

52. Pursuant to the FOIA (a)(6)(A)(ii), remand to Liebman Brady's Appeals of the adverse determinations made by Young under FOIA Cases LR-2011-0202, -0203, -0237, -0240, -0272, -0273, -0289, -0327, -0345, -0453, -0468 and -0485 and order Liebman to make determinations with respect to such Appeals.

53. Pursuant to the FOIA (a)(6)(A)(ii), remand to Liebman Brady's appeals of the adverse determinations made by Heltzer under FOIA Cases ES-2011-0048, 0051 and -0052 and order Liebman to make determinations with respect to such Appeals.

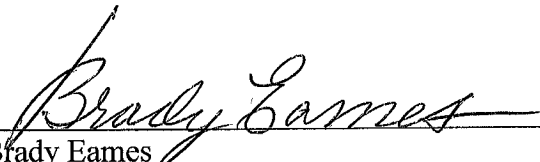
54. Pursuant to the FOIA (a)(6)(A)(ii), order Liebman to make a determination with respect to Brady's Appeal of Heltzer's adverse determinations made under the FOIA Case ES-2011-0053.

55. Enjoin Liebman, or any other *Head* of the Agency, from *not* notifying Brady in future adverse determinations made in FOIA cases by Young, or by any other FOIA Officer, that Brady has the right to appeal to the *head* of the Agency to make determinations with respect to such adverse determinations.

56. Enjoin Liebman, or any other *Head* of the Agency, from *not* making determinations with respect to Brady's future appeals of adverse determinations made by Young and/or Heltzer or by any other FOIA Officer and/or Executive Secretary of the Agency.

Respectfully submitted,

Date: July 1, 2011



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